

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0442P

**Withholding Tax
For the Calendar Year 2000**

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of annual W-2s and the WH-3.

The taxpayer is an in-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the W-2s and WH-3 were mailed before the due date.

The Department notes the postmark on the accompanying envelope was April 26, 2001, 57 days pass the due date.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions

provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.